

GABE KIRKPATRICK §
v. § CIVIL ACTION NO. 6:11cv632
DIRECTOR, TDCJ-CID §

The Petitioner Gabe Kirkpatrick, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of disciplinary action taken against him during his confinement in TDCJ. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Kirkpatrick complained of a disciplinary case he received for possession of two cell phone batteries, for which he received as punishment a reduction in classification status, a year of medium custody, 30 days of cell, commissary, recreation, and visitation restrictions, and the loss of 360 days of good time credits. He conceded that he was not eligible for release on mandatory supervision.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the petition be denied. The Magistrate Judge concluded that Kirkpatrick had failed to show that the punishments imposed deprived him of a constitutionally protected liberty interest, as set out in Sandin v. Conner, 115 S.Ct. 2293, 2301 (1995). The Magistrate Judge also recommended that Kirkpatrick be denied a certificate of appealability *sua sponte*.

Kirkpatrick received a copy of the Magistrate Judge's Report on December 5, 2011. He filed a motion for extension of time in which to object to this Report, and the motion was granted to January 19, 2012. Kirkpatrick received a copy of the order granting the extension on December 21, 2011, but no objections have been filed; accordingly, Kirkpatrick is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 5) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Petitioner Gabe Kirkpatrick is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED.

It is SO ORDERED.

SIGNED this 14th day of February, 2012.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE